

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	

**REPLY TO OPPOSITIONS TO
PETITION FOR RECONSIDERATION OF *ETC DESIGNATION ORDER***

The Independent Telephone & Telecommunications Alliance (ITTA), the Western Telecommunications Alliance (WTA), and TDS Telecommunications Corporation (TDS) submit this reply to the Oppositions to the ITTA/WTA/TDS Petition for Reconsideration¹ of the *ETC Designation Order* to reiterate our commitment to preserving the integrity and accountability of the federal Universal Service Fund (USF or Fund). As we made clear in our comments on the petitions for reconsideration filed by various wireless interests, our goal is not to hinder competition in rural and high-cost service areas or to subject petitioners for eligible telecommunications carrier (ETC) designation to burdensome administrative requirements.

Our proposals are intended to protect consumer expectations and the integrity and accountability of the Fund. Thus, we have supported reasonable requirements designed to ensure that USF support is distributed only to carriers that provide “universal” service consistent with statutory requirements and subject to comparable obligations with respect to network coverage and service quality. We urge the Commission to adopt these proposals, which will promote the judicious administration of the Fund and advance its intended purposes and the Commission’s own policy priorities.

¹ Petition for Reconsideration of the Independent Telephone & Telecommunications Alliance, Western Telecommunications Alliance, and TDS Telecommunications Corp., CC Docket No. 96-45 (June 24, 2005) (ITTA/WTA/TDS Petition), seeking reconsideration of Report and Order, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 05-46 (rel. March 17, 2005) (*ETC Designation Order* or *Order*).

I. THE ITTA/WTB/TDS PROPOSALS ARE NEITHER DISCRIMINATORY NOR ANTI-COMPETITIVE

In their Oppositions to the ITTA/WTB/TDS Petition, wireless carriers repeatedly claim that the Petition seeks measures that discriminate against wireless competitive ETCs (CETCs) and insulate incumbent local exchange carriers (ILECs) from competition.² This argument is inaccurate and unavailing. Competition from wireless carriers is not a significant concern for ILECs serving rural areas where wireless coverage remains spotty and intermittent. Our proposals are not intended to, and should not, hinder wireless carriers from providing competitive telecommunications services in rural telephone company service areas. We seek only to ensure that those carriers do not receive federal USF funding for their services unless they are prepared to satisfy the statutory obligation to serve the entire designated service area. Indeed, our proposals would provide USF support specifically to those carriers that will provide the type of ubiquitous and reliable wireless service that could become a meaningful competitive threat to the wireline incumbent.

The wireless carriers' arguments distract from the statutory obligation they are trying to evade. The key issue here is not whether rural and high-cost customers should have access to reasonably-priced wireless services. We do not dispute that they should. The real issue – the important, statutory issue – is whether the limited resources of the USF should be available to fund wireless carriers that have evidenced no concrete commitment to provide their services broadly throughout the targeted funding areas. It is our position that providing support in such circumstances is inconsistent with both federal law and sound policy. Moreover, it is not

² See Opposition to Petition for Reconsideration of the Alliance of Rural CMRS Carriers, CC Docket No. 96-45, at ii (Aug. 4, 2005) (ARC Opposition); Alltel Communications, Inc. Opposition to Petition for Reconsideration, CC Docket No. 96-45, at 5-6 (Aug. 4, 2005) (Alltel Opposition); Opposition of CTIA — The Wireless Association, CC Docket No. 96-45, at 1 (Aug. 4, 2005) (CTIA Opposition); Opposition of Dobson Cellular Systems, Inc. to Petition for Reconsideration of the ETC Designation Order, CC Docket No. 96-45, at ii, 3-4 (Aug. 4, 2005) (Dobson Opposition); Nextel Partners, Inc. Opposition to Petition for Reconsideration, CC Docket No. 96-45, at 1-2 (Aug. 4, 2005) (Nextel Opposition) (collectively, Oppositions).

“competitively neutral” to make USF funds widely available to competitive ETCs that do not face coverage and service obligations comparable to those imposed on ILECs under state law.³

Contrary to assertions in the Oppositions, the motivation behind both the proposals in the ITTA/WTB/TDS Petition and our efforts in this proceeding generally has been to protect the long-term viability and integrity of the Fund by ensuring that distribution is limited to carriers who evidence a commitment to use USF support for its intended statutory purpose and to circumstances in which the public interest will be served by the payment of USF support.⁴ As Chairman Martin has noted, the primary purpose of the Fund is not to promote competition, but to ensure that customers in rural and high-cost areas receive telecommunications services and rates comparable to those in urban and lower-cost areas.⁵ That fundamental goal is not advanced where support is squandered on carriers committed only to serving populated areas and rural highway corridors.⁶ The public interest in a stable and sustainable USF is also not served where support levels paid to CETCs are disproportionate to the benefits realized by consumers from the designation of additional ETCs.

³ See ITTA/WTB/TDS Petition at 5-6.

⁴ See also Opposition to Petitions for Reconsideration of the National Telecommunications Cooperative Association and the Organization for the Promotion and Advancement of Small Telecommunications Companies, CC Docket No. 96-45, at 2-3 (Aug. 4, 2005) (NTCA/OPASTCO Opposition).

⁵ Memorandum Opinion and Order, *Federal-State Joint Board on Universal Service, Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, FCC 04-37 (rel. Apr. 12, 2004) (*Highland Cellular*) (Dissenting Statement of Commissioner Kevin J. Martin); Second Report and Order and Further Notice of Proposed Rulemaking, *Multi-Association Group Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, FCC 01-304 (rel. Nov. 8, 2001) (*MAG Order*) (Separate Statement of Commissioner Kevin J. Martin) (“I have some concerns with the Commission’s policy . . . of using universal service support as a means of creating ‘competition’ in high cost areas.”).

⁶ We are not arguing that all petitioners for CETC designation fall into this category. We are simply noting that some wireless carriers petitioning for ETC designation have characterized their own intentions this way. See, e.g., Petition for Reconsideration and Clarification of Nextel Partners, Inc., CC Docket No. 96-45, at 4 (June 24, 2005) (Nextel Petition). We therefore ask the Commission to establish criteria and certification requirements that will enable the Commission and state regulators to evaluate petitioners’ true intentions and to limit USF funding to those that truly plan to make their services broadly available to consumers throughout the rural telephone company service areas in which they are seeking USF support.

II. APPLICANTS FOR ETC DESIGNATION SHOULD EVIDENCE A COMMITMENT TO ACHIEVE NETWORK COVERAGE THROUGHOUT THE DESIGNATED SERVICE AREA

The proposal in the ITTA/WTB/TDS Petition to require petitioners seeking ETC designation to provide proof of a commitment and ongoing progress toward achieving ubiquitous service coverage is sound, fiscally-responsible policy that should relieve some of the strains on the USF while still making support available to carriers dedicated to promoting the goals of the USF. The Commission itself has recognized that the current strains on the Fund are caused at least in part by the growing number of wireless CETCs drawing support from the Fund.⁷ Moreover, although new funding to existing ILECs arises primarily from the transfer of some access charge revenues to explicit USF mechanisms, payments to CETCs (including access charge replacement mechanisms paid to wireless CETCs that have never relied on access charges to fund their service costs) are growing primarily because of the designation of new ETCs. It is critical that the ETC designation process play a role in ensuring that these new outflows of funding go only to carriers that are advancing the goals for which the USF was established. Otherwise, consumers in rural and urban areas alike will suffer from higher USF contribution levels without corresponding enhancements in the scope of the national telecommunications infrastructure.

Several wireless carriers contend that the ITTA/WTB/TDS Petition sought to require ETC petitioners to provide network coverage throughout the service area *prior* to becoming eligible for universal service support.⁸ Although such a policy would be defensible under the statute, we recognize and acknowledge the established Commission precedent that

⁷ Memorandum Opinion and Order, *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, FCC 03-338, ¶ 31 (rel. Jan. 22, 2004) (*Virginia Cellular*) (noting Commission's concern "about the impact on the universal service fund due to the rapid growth in high-cost support distributed to competitive ETCs").

⁸ *See, e.g.*, Dobson Opposition at 2-4; Nextel Opposition at 2-3.

CETCs may be designated prior to providing service throughout the designated service area.⁹

Our position in this proceeding is that ETC petitioners at least should be required, prior to designation, to demonstrate a commitment and concrete plan to provide coverage throughout the designated service area within a reasonable time after their designation.¹⁰ It is not sufficient that the actual support paid to CETCs will be low if they in fact serve only a few customers in the areas in which they have been designated as ETCs.¹¹ The point is that a carrier should not be entitled to recover *any* support from the Fund if it is merely operating in areas that already provide sufficient return on investment, rather than making its services broadly available throughout high-cost service areas and thereby advancing the purposes for which the Fund was established.

The coverage that ETC petitioners must demonstrate obviously need not extend to areas that are unpopulated,¹² but should be ubiquitous in populated areas to an extent comparable to state carrier-of-last-resort obligations for rural ILECs.¹³ That type of coverage, which is necessary to provide a truly viable competitive alternative to wireline services, is not assured by the requirement in the *Order* that CETCs provide service in response to a reasonable request “if service can be provided at reasonable cost.”¹⁴ First, the standard in the *Order* allows CETCs to avoid service obligations in circumstances in which most ILECs would be required to provide service (albeit with some special construction contribution from the end user). Second, the

⁹ Declaratory Ruling, *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, 15 FCC Rcd 15168, ¶ 13 (2000).

¹⁰ As noted in our recent comments, we are willing to accommodate the wireless carriers’ opinion concerning the appropriate duration for network buildout plans. *See* ITTA/WTB/TDS Comments on Petitions for Reconsideration of *ETC Designation Order*, CC Docket 96-45, at 3-4 (Aug. 4, 2005) (ITTA/WTB/TDS Comments).

¹¹ *See, e.g.*, Nextel Opposition at 4-5; Alltel Opposition at 3-4.

¹² *See, e.g.*, Dobson Opposition at 3.

¹³ *See* ITTA/WTB/TDS Petition at 5-6; ITTA/WTB/TDS Comments at 5. Although it may not be necessary to subject CETCs to all “carrier of last resort” obligations imposed on incumbents, *see* CTIA Opposition at 5, state COLR regulations do provide appropriate guidelines for the scope of coverage that wireless CETCs should be required to achieve in their designated service areas. ITTA/WTB/TDS Petition at 6.

¹⁴ *ETC Designation Order* ¶ 22.

Order does not address the question of how a potential customer would be aware of the right to request service from a wireless CETC whose website and other coverage documentation simply indicate that network coverage does not extend to the potential customer's location within the designated service area.¹⁵

III. ETC DESIGNATION CRITERIA THAT TAKE INTO ACCOUNT THE IMPACT ON THE FUND WILL PROMOTE THE PUBLIC INTEREST AND THE INTEGRITY OF THE FUND

The ITTA/WTB/TDS Petition's proposed criteria for taking into account the impact of CETC designation on the USF, like our other proposals, are motivated by a desire to protect the integrity and stability of the Fund rather than by any anti-competitive or discriminatory intent. It is not inappropriate for broader policy goals and priorities to be taken into account in decision-making on individual petitions.¹⁶ To the contrary, it would violate the statute for the Commission to permit the designation of individual ETCs in a manner that undermines the statutory universal service goals.¹⁷ Accordingly, it was entirely appropriate for the ITTA/WTB/TDS Petition to propose factors that might be considered by the Commission to ensure that the overall impact on the Fund is considered in individual ETC designation proceedings.

As noted above, the specific proposals offered in the Petition are intended to ensure that USF support is distributed only in circumstances in which the benefits to consumers of designating an additional ETC justify the support to be paid. Setting a per-line benchmark that requires regulators explicitly to balance the amount of support that would be paid against the

¹⁵ Again, this situation differs from that of wireline ILECs, who typically file tariffs with state regulators delineating the geographic area in which the ILEC is obligated to provide service and the procedure through which a potential customer may request (and expect delivery of) service. We are not proposing that wireless CETCs be subject to similar state tariffing requirements, but only that the Commission adopt criteria to determine whether a CETC is prepared to provide service throughout a designated service area to an extent comparable to the ILEC.

¹⁶ ARC Opposition at 10.

¹⁷ Section 254 requires the Commission to adopt regulations implementing Section 214(e) that preserve and advance universal service in accordance with the principles specified in the statute. 47 U.S.C. § 254(a)-(b).

(perhaps limited) additional service that would be made available through the designation of an additional ETC is one eminently reasonable way to promote that policy.¹⁸

IV. MANDATORY GUIDELINES WILL PROMOTE CONSISTENTLY RIGOROUS STATE REVIEW OF ETC PETITIONS

Several carriers opposing the Petition claimed that mandatory guidelines for state ETC proceedings are unnecessary because state proceedings have been sufficiently rigorous to ensure that the Fund is being distributed judiciously.¹⁹ Although we agree that some states have developed appropriately rigorous standards for ETC petitions, standards across the states have been inconsistent, and there have been instances of state regulators designating competitive ETCs with little inquiry or investigation of the petitioners' qualifications or the effect of the designation on the public interest. Allowing these inconsistencies to continue will undermine both the integrity of the Fund and the predictability of its administration.

In objecting to mandatory guidelines, Dobson Cellular Systems, Inc. asserted that "the [argument] that mandatory guidelines are needed because states are designating ETCs simply to maximize support flowing to that state is, in Dobson's experience, factually incorrect."²⁰ However, state commissioners themselves have raised this very concern in recent ETC designation proceedings. For instance, the Washington State Utilities and Transportation Commission recently granted ETC designation to Cingular Wireless without a hearing and after making only cursory findings.²¹ Dissenting from the order granting the designation, State

¹⁸ The need for per-line benchmarks might be obviated if CETCs recovered support based on their own incurred costs rather than those of the ILEC. In the absence of such a change to the CETCs' basis of support, however, it is reasonable for the Commission to take into account per-line costs in considering the potential harm from authorizing high support payments to CETCs that may not be justified by the benefits that consumers would realize from the availability of another complementary wireless service provider.

¹⁹ See, e.g., Dobson Opposition at 7-8; Nextel Opposition at 7-8.

²⁰ Dobson Opposition at 7.

²¹ Order Granting Petition for Designation as an Eligible Telecommunications Carrier, *Bellingham Cellular Partnership; et al. for Designation as an Eligible Telecommunications Carrier*, Docket No. UT-043011 (April 29, 2005) (Cingular Wireless Order) (attached as Exhibit 1).

Commissioner Philip Jones expressed concern that Washington's designation procedures have not been sufficiently rigorous:

I respectfully disagree with the result of this order. I have previously voiced reservations about the financial sustainability of the federal high-costs funds. The [*ETC Designation Order*] should give the Commission reason to pause and rethink its ETC designation process. . . . We should not represent only the interests of the petitioners in their claims to gain as much of the federal largesse of the Universal Service Administration Corporation (USAC) as possible. We also represent the interests of ratepayers who are paying an increasingly heavy burden to support universal service.²²

In our experience, the concerns expressed by Commissioner Jones extend to other state proceedings as well. In recent years, TDS Telecom has challenged orders in other states where designations were granted without, for instance, a hearing and without the proper findings and procedures.²³ This evidence, coupled with the policy arguments made in the ITTA/WTB/TDS Petition and other comments in this proceeding,²⁴ justify requiring state regulators exercising their statutory power to review ETC petitions to do so consistently with the statute and mandatory federal guidelines that expand on the statutory requirements.²⁵

Dictating mandatory guidelines for state regulators reviewing ETC petitions will not, contrary to the Oppositions' claims,²⁶ deprive states of their statutory authority to designate competitive ETCs. State regulators will continue to evaluate whether an individual petitioner has complied with the criteria and will determine whether the designation of the ETC is consistent with the public interest as more particularly defined by the Commission's criteria. Nothing in

²² *Id.* ¶¶ 34-40 (Jones, Comm'r dissenting).

²³ Request for Rescission of Order and Reopening of Case by CenturyTel and TDS Telecom Local Exchange Companies, *Application of United States Cellular Corporation for Designation as an Eligible Telecommunications Carrier and Petition for a Declaratory Ruling*, Docket No. 8225-TI-102 (Jan. 9, 2003) (Wisconsin Public Service Commission) (Attached as Exhibit 2).

²⁴ See generally ITTA/WTB/TDS Petition at 12-16; ITTA/WTB/TDS Comments at 7.

²⁵ 47 U.S.C. § 214(e)(2).

²⁶ See, e.g., ARC Opposition at 12-13; CTIA Opposition at 9.

Section 214(e)(2) prohibits the Commission from providing state commissions with guidance in exercising their responsibilities under that section. In fact, Section 254 of the Act expressly authorizes the Commission, in consultation with the Federal-State Joint Board, to promulgate regulations to implement all of Section 214(e).²⁷

V. THE COMMISSION HAS PREVIOUSLY REQUIRED ETC PETITIONERS TO COMPLY WITH CURRENT CRITERIA FOR ETC DESIGNATION

Several wireless carriers oppose the proposal in the ITTA/WTB/TDS Petition to apply the current ETC designation criteria to pending applications for ETC designation and service area redefinition.²⁸ The ITTA/WTB/TDS proposal is fully consistent with the procedure the Commission followed after it adopted the interim ETC designation criteria in *Virginia Cellular* and *Highland Cellular*,²⁹ and no commenter has explained why this approach is not appropriate in response to the adoption of permanent ETC criteria in the *ETC Designation Order*. Applying the current criteria to pending ETC petitions will further promote the integrity of the Fund by ensuring that USF support is not paid to any ETC in circumstances where such payment is not consistent with the public interest as currently understood by the Commission.

²⁷ 47 U.S.C. § 254(a).

²⁸ See Alltel Opposition at 7-11; ARC Opposition at 15-16; CTIA Opposition at 9-10; Dobson Opposition at 9-13.

²⁹ After publication of *Virginia Cellular* and *Highland Cellular*, the Wireline Competition Bureau issued public notices listing the then-pending ETC petitions and giving petitioners an opportunity to supplement their petitions with evidence showing that they satisfied the *Virginia Cellular/Highland Cellular* criteria and giving interested parties an opportunity to comment on the supplemental filings. See, e.g., Public Notice, *Parties Are Invited to Update the Record Pertaining to Pending Petitions for Eligible Telecommunications Carrier Designations*, 19 FCC Rcd 6409 (2004).

CONCLUSION

For the reasons set forth above and in the Petition, we urge the Commission to reconsider certain decisions made in the *ETC Designation Order* and to bring the rules in line with statutory requirements and fiscally-responsible policy to promote the long-term integrity and viability of the universal service program.

Respectfully submitted,



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Dated: Aug. 15, 2005

CERTIFICATE OF SERVICE

I, Mary Newcomer Williams, hereby certify that on this 15th day of August, 2005, I caused copies of the foregoing Reply to Oppositions to Petition for Reconsideration of *ETC Designation Order* to be served by electronic mail, with hard copies to follow on August 16, 2005 by first class mail (postage prepaid), on:

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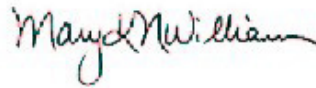
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EXHIBIT 1

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of)	DOCKET NO. UT-043011
)	
BELLINGHAM CELLULAR)	ORDER NO. 02
PARTNERSHIP; BREMERTON)	
CELLULAR TELEPHONE)	
COMPANY; HOOD RIVER)	
CELLULAR TELEPHONE)	
COMPANY, INC.; NEW)	
CINGULAR WIRELESS PCS,)	
LLC; and OLYMPIC CELLULAR)	
TELEPHONE COMPANY, INC.,)	
d/b/a CINGULAR WIRELESS,)	ORDER GRANTING PETITION
LLC,)	FOR DESIGNATION AS AN
)	ELIGIBLE
For Designation as an Eligible)	TELECOMMUNICATIONS
Telecommunications Carrier)	CARRIER
.....)	

1 ***Synopsis:** The Commission grants the petition of Cingular Wireless for designation as an eligible telecommunications carrier. Cingular Wireless meets the requirements for designation, and granting the petition is in the public interest. Cingular Wireless is ordered to provide a map of its licensed service areas in electronic format.*

I. INTRODUCTION AND BACKGROUND

2 The Telecommunications Act of 1996 (federal Act or Act)¹ requires state utility commissions to make a number of decisions related to opening local telecommunications markets to competition and preserving and advancing universal service. One of those decisions is the designation of qualified common carriers as eligible telecommunications carriers (ETCs). In order to be eligible for federal universal service support from the federal High Cost Fund (HCF), a common carrier must be designated by

¹ Public Law 104-104, 110 Stat. 56 (1996), codified in scattered sections of Title 47 U.S.C.

the state commission as an ETC. 47 U.S.C. § 214(e)(1). Once designated as an ETC, a carrier must advertise the availability of service and offer service in the geographic area in which it is designated. *Id.*

3 The Commission considered this petition at its regularly scheduled open public meeting on April 27, 2005.

4 Cingular Wireless, LLC (hereafter “Cingular”) petitioned the Commission for designation as an ETC on March 2, 2005. Cingular merged with AT&T Wireless in October 2004 and now Cingular seeks to be designated an ETC in place of AT&T Wireless for the identical geographic areas. Cingular has represented that it will fulfill the requirements of 47 U.S.C. § 214(e) and comply with 47 U.S.C. § 254.

5 The Washington Independent Telephone Association (WITA) commented on Cingular’s petition. WITA does not oppose the designation in its comments as it did when the Commission considered the petition of AT&T Wireless. Rather, WITA directs the attention of the Commission to a recently released Federal Communications Commission (FCC) order in which state commissions are urged to adopt several requirements for applicants of ETC designation.

6 In particular, WITA points out that Cingular will be eligible to receive approximately \$14 million dollars of federal high-cost fund (HCF) support. This amount will be approximately 15 percent of all HCF support for ETCs in Washington in 2005. Implicit in the comments is WITA’s previously stated views that this may be too much support for a wireless carrier and that support in this amount, coupled with similar amounts of support for wireless carriers in other states, may be placing an unsustainable burden on the federal HCF.

- 7 Also implicit in WITA's comments is its view that the Commission should, if it grants the petition, condition that grant on Cingular's compliance with several of the requirements urged on states by the FCC.
- 8 Commission Staff provides information that places in a national context the HCF support amount provided to wireless carriers in Washington. Commission Staff recommends against denying the petition based on the amount of HCF support for which Cingular will be eligible. Commission Staff's view is that the effect of designations on the HCF is a national issue and that although the FCC has raised the issue of the effect of a single designation on the fund, it has not addressed this national issue in a meaningful way.
- 9 Commission Staff recommends the Commission refrain from imposing any requirements on Cingular like those urged on states by the FCC. Commission Staff believes it is premature to apply these conditions to an existing ETC when the Commission has not yet decided whether to apply them in reviewing new ETC applications. In the meantime, states Commission Staff, we may rely on WAC 480-120-311 to guide ETCs in the proper expenditure of HCF support.

II. DISCUSSION AND DECISION

- 10 The Commission has been petitioned by Cingular to replace AT&T Wireless with Cingular as the ETC for areas identical to the geographic areas for which AT&T Wireless was designated an ETC. AT&T Wireless is now a wholly-owned subsidiary of Cingular as a result of the merger of the companies.
- 11 We reiterate our view that the level of support provided to ETCs, wireline as well as wireless, is an issue for the FCC to address. It has a docket open on that topic.

- 12 The issues that the dissent raises are important policy considerations that should be addressed at the state level. We are mindful of these issues, including what requirements beyond those of WAC 480-120-311 should be applied to ETCs. We are now addressing those issues in a rulemaking in Docket No. UT-053021.
- 13 This petition, however, is not the appropriate proceeding in which to undertake a review of the policy considerations of ETC designations. Cingular seeks to serve in the exact same geographic territory as did AT&T. It is true that there will be a 20% (\$3.2 million) increase in high cost fund support reflecting the customers that Cingular brings to the merger. To delay or deny this petition, however, would have the practical effect of withdrawing \$13.2 million of existing high cost fund support from the former AT&T. We are concerned about the effect withdrawing this support would have on technology investment in Washington State. If these funds are not allocated to Cingular, there is no reason to believe they will otherwise accrue to the benefit of this state rather than being spent elsewhere.
- 14 We base our decision on the written materials provided in this docket, information presented at the Open Meeting, and on our knowledge and experience regarding ETC designation. We have a substantial number of thorough and reasoned decisions on which we rely to reach our conclusion. As a result, we will not discuss in detail every issue that has come before the Commission and has been discussed and decided in prior proceedings.
- 15 We conclude that it is in the public interest to grant the modification requested by Cingular. Our action will preserve and advance universal service and promote competition. *RCW 80.36.300; 47 U.S.C. § 254.*

III. OTHER ISSUES

16 The Commission orders Cingular to produce electronic maps of its licensed service areas. Production of electronic maps will assist Cingular in claiming federal universal service funds to which it will become entitled. Those maps will also assist rural incumbent local exchange carriers (ILECs), the FCC (through the Universal Service Administration Company), and, if need be, this Commission, to determine the accuracy of requests for federal support that are based on customer location. Cingular must prepare maps with the same standards and attributes required of rural ILECs, and its maps must be filed with the Commission, where they will be available to rural ILECs. The availability of electronic maps from ETCs serving rural areas (including Rural ILECs, Cingular, and others) will permit all interested persons to have an accurate representation of exchanges and service areas for the purpose of ensuring accurate requests for, and payment of, federal universal service support.

17 A combination of state and federal laws impose upon ETCs an obligation to offer reduced-price telephone service to low-income customers within the ETC's service area. 47 U.S.C. § 254(i), (j); 47 C.F.R. § 54.405, 411; RCW 80.36.420; WAC 480-122-020; Chapter 388-273 WAC. Cingular acknowledges these obligations in its petition, and the commitments made by Cingular in its petition are sufficient to meet the criteria for designation as an ETC. Cingular will participate in the federal Lifeline and Link Up programs. *Petition*, ¶¶ 13-14; *Affidavit of Daniel Youmans*, ¶ 8. In addition, Cingular will offer additional discounts through the Washington Telephone Assistance Program, which is administered by the Department of Social and Health Services (DSHS). *Petition*, ¶ 14. There is some uncertainty about the appropriate role of wireless carriers in the state low-income program, but Cingular has committed to work with DSHS to ensure proper implementation of WTAP. *Id.*

IV. FINDINGS OF FACT

- 18 Having discussed above all matters material to our decision, and having
stated general findings and conclusions, the Commission now makes the
following summary findings of fact.
- 19 (1) Bellingham Cellular Partnership; Bremerton Cellular Telephone
Company; Hood River Cellular Telephone Company, Inc.; New
Cingular Wireless PCS, LLC; and Olympic Cellular Telephone
Company, Inc.), subsidiary licensees of Cingular Wireless LLC
(d/b/a Cingular Wireless), and referred to in this order as Cingular,
are telecommunications companies doing business in the state of
Washington.
- 20 (2) Cingular provides service in the exchanges listed in Appendix A.
- 21 (3) Cingular's petition satisfies the requirements of 47 U.S.C. §
214(e)(2).
- 22 (4) Cingular competes with rural ILECs and other telecommunications
carriers in the exchanges where it serves.

V. CONCLUSIONS OF LAW

- 23 (1) The Commission has jurisdiction over the subject matter of this
petition and over Cingular with respect to its designation as an
ETC.
- 24 (2) The Commission is not required by the Act or by any provision of
state law to hold an adjudicative proceeding or other hearing prior
to designating a telecommunication carrier an ETC.

- 25 (3) Granting Cingular's petition for designation as an ETC in the
exchanges listed in Appendix A is consistent with the public
interest, and is consistent with applicable state and federal law.
- 26 (4) Granting Cingular's petition for designation as an ETC in areas
served by rural telephone companies is in the public interest.
- 27 (5) Requiring Cingular to create electronic maps of its licensed service
areas is in the public interest.
- 28 (6) The Commission has authority to modify, suspend, or revoke the
designations granted in this order at a future date.

VI. ORDER

- 29 This Order decides issues raised in a non-adjudicative proceeding. Based
on the foregoing, the Commission orders:
- 30 (1) The Commission grants the petition of Bellingham Cellular
Partnership; Bremerton Cellular Telephone Company; Hood River
Cellular Telephone Company, Inc.; New Cingular Wireless PCS,
LLC; and Olympic Cellular Telephone Company, Inc., subsidiary
licensees of AT&T Wireless Service, Inc. (d/b/a Cingular Wireless),
as modified by this Order. Each of the requested designations set
forth in Appendix A is granted.
- 31 (2) Cingular must provide Lifeline and Link Up discounts consistent
with 47 C.F.R. § 54.405 and 411.
- 32 (3) Cingular must prepare electronic maps of its licensed service areas
with standards and attributes as described in the Commission's
Order in Docket Nos. UT-013058 and UT-023020, entered August 2,
2002.

- 33 (4) The Commission has authority to modify, suspend, or revoke these
designations, including the service areas accompanying those
designations, at a future date.

DATED at Olympia, Washington, and effective this 29th day of April, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner (dissenting):

- 34 I respectfully disagree with the result of this order. I have previously voiced
reservations about the financial sustainability of the federal high-cost funds
(HCF).
- 35 The 2004 Recommended Decision of the Joint Board on Universal Service,² and
the more recent FCC Order on Eligible Telecommunications Carrier (ETC)
designation³ that responded to the Recommended Decision, should give the
Commission reason to pause and rethink its ETC designation process. We as a

² *In the Matter of Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, FCC 04J-1, 19 FCC Rcd. 4257 ("Recommended Decision") at ¶2 (2004).

³ *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Docket 96-45, FCC 05-46 (rel. March 17, 2005).

state commission play an important role in the joint federal-state regulation of telephone companies to ensure universal service. We should not represent only the interests of the petitioners in their claims to gain as much of the federal largesse of the Universal Service Administration Corporation (USAC) as possible. We also represent the interests of ratepayers who are paying an increasingly heavy burden to support universal service. We therefore represent the public interest in ensuring economy and purpose in the appropriate usage of USAC funds.

36 In my view, Cingular Wireless's petition does not merely seek the substitution of its name for that of AT&T. By Cingular's own estimates, there will be a 20% increase in the number of access lines covered by the newly combined entity.⁴ These additional access lines represent new ETC beneficiaries, bringing new financial obligations, and warranting a closer review of the petition.

37 I believe we should put a "freeze" on any expansion of ETCs pending the completion of the Commission's ETC rulemaking in Docket No. UT-053021. When subsidies spiral out of control in other arenas such as foreign trade, the parties often impose standstill agreements in which the status quo is preserved until the parties attempt to resolve the dispute over a certain period of time. Such a process is warranted here.

38 Our state demonstrated exemplary leadership in the years immediately following the passage of the 1996 Telecommunications Act by allowing a certain number of wireless carriers to benefit from ETC designation and compete with traditional rural ILECs. Geographic deaveraging of support has also promoted fair competition. However, as the number of ETCs continues to increase, it's important to step back and reconsider what subsidies are truly needed to obtain and maintain competition.

⁴ I should note these are estimates only provided by Cingular; the Commission Staff did not attempt to gather data or independently confirm these estimates.

39 The following factors influence my views:

- An increasing number of intermodal (such as cable) and other competitors (such as VoIP) do not support universal service
- An increase in the federal USF charge from 4% to 11%, with additional increases expected imminently
- An inadequate annual certification process that does not attempt to answer fundamental questions about how monies are spent
- A declining number of wireline access lines, both for ILECS and rural LECs, which serve as the majority basis for USAC funding (although wireless carriers make a pro rata contribution as well)
- The lack of time to analyze and respond to the important recommendations in the recent FCC Report and Order, such as "... a more rigorous ETC designation process, their application by the Commission and state commissions will improve the long-term sustainability of the universal service fund."⁵

40 While I am disappointed with the Commission action on the Cingular Wireless petition, I welcome the Commission's decision to open the rulemaking in Docket No. UT-053021. With good faith and hard work, I believe we can improve our oversight of the ETCs to ensure that funds are spent prudently on investments that truly promote the goals of universal service.

PHILIP B. JONES, Commissioner

⁵ *Supra*, fn. 3.

APPENDIX A

<u>SAC</u>	<u>TELEPHONE COMPANY</u>	<u>WIRE CENTER EXCHANGE</u>	
522416	Verizon Northwest Inc. – WA	ANCRWAXX	ANACORTES
		ARTNWAXX	ARLINGTON
		BNCYWAXX	BENTON CITY
		BOTHWAXB	BOTHELL
		BURLWAXA	BURLINGTON
		CMISWAXA	CAMANO ISLAND
		CAMSWAXX	CAMAS
		CLVWWAXA	CLEARVIEW
		CPVLWAXX	COUPEVILLE
		DRTNWAXX	DARRINGTON
		DVLLWAXX	DUVALL EAST
		EVRTWAXC	EVERETT CASINO
		EVRTWAXF	EVERETT MAIN
		EVRTWAXA	EVERETT PRIMARY CNTR
		FRFDWAXA	FAIRFIELD
		FRTNWAXX	FARMINGTON
		GRFDWAXX	GARFIELD
		MSCWIDXX	GARRISON
		GERGWAXX	GEORGE
		GRFLWAXX	GRANITE FALLS
		HLLKWAXX	HALLS LAKE
		JUNTWAXA	JUANITA
		KNWCWAXB	KENNEWICK MAIN
		KNWCWAXA	KENNEWICK-HIGHLANDS
		KNWCWAXC	KENNEWICK-MEADOW SPRINGS
		KRLDWAXX	KIRKLAND
		LKGWWAXA	LAKE GOODWIN
		LKSTWAXA	LAKE STEVENS
		MRWYWAXA	MANOR WAY
		MYVIWAXX	MARYSVILLE
		MONRWAXX	MONROE
		MTVRWAXX	MOUNT VERNON
		RCLDWAXA	NORTH RICHLAND
		OKHRWAXX	OAK HARBOR
		PALSWAXX	PALOUSE
		PLMNWAXX	PULLMAN
		QNCYWAXX	QUINCY
		RDMDWAXA	REDMOND
		RCLDWAXB	RICHLAND
		RCBHWAXX	RICHMOND BEACH

RCFRWAXB	ROCKFORD
ROSLWAXA	ROSALIA
SMSHWAXA	SAMMAMISH
SWLYWAXA	SEDRO WOOLLEY
SLLKWAXA	SILVER LAKE
SKYKWAXX	SKYKOMISH
SNHSWAXX	SNOHOMISH
SOLKWAXX	SOAP LAKE
STWDWAXX	STANWOOD
SULTWAXX	SULTAN
TEKOWAXX	TEKOA
WSHGWAXA	WASHOUGAL
WSRVWAXA	WASHOUGAL RIVER
WRLDWAXA	WEST RICHLAND
WDLDWAXA	WOODLAND

522449 Verizon Northwest Inc. – WA

ACMEWAXA	ACME
ALGRWAXX	ALGER
BGLKWAXX	BIG LAKE
BRBAWAXA	BIRCH BAY
BLANWAXB	BLAINE
BURLWAXX	BURLINGTON
CNCRWAXX	CONCRETE
CNWWAXX	CONWAY
CSTRWAXA	CUSTER
DMNGWAXA	DEMING
EDSNWAXX	EDISON
EVSNWAXX	EVERSON
FNDLWAXA	FERNDALE
LACNWAXX	LA CONNER
LARLWAXX	LAUREL
HMTNWAXA	LYMAN
LYNDWAXX	LYNDEN
MRBLWAXX	MARBLEMOUNT
MTVRWAXX	MOUNT VERNON-CONTEL
NCHSWAXX	NACHES
NILEWAXX	NILE
SWLYWAXX	SEDRO WOOLLEY
SUMSWAXX	SUMAS

525161 Qwest Corp. – WA

AUBNWA01	AUBURN
BNISWA01	BAINBRIDGE ISLAND
BTLGWA01	BATTLEGROUND
BLFRWA01	BELFAIR
BLLVWAGL	BELLEVUE GLENCOURT
BLLVWASH	BELLEVUE SHERWOOD
BLHMWALU	BELLINGHAM LUMMI
BLHMWA01	BELLINGHAM REGENT
BDMDWA01	BLACK DIAMOND
BYLKWA01	BONNEY LAKE
BMTNWA01	BREMERTON ESSEX
BCKLWA01	BUCKLEY
CSRKWA01	CASTLE ROCK
CENLWA01	CENTRALIA
CHHLWA01	CHEHALIS
LSTNIDSH	CLARKSTON
CLELWA01	CLE ELUM
COLBWA01	COLBY
CRSBWA01	CROSBY
CRMTWA01	CRYSTAL MOUNTAIN
FDWYWA01	DES MOINES FED. WAY
DESMWA01	DES MOINES TAYLOR
ESTNWA01	EASTON
ENMCWA01	ENUMCLAW
EPHRWA01	EPHRATA
GRHMWAGR	GRAHAM
GRBLWA01	GREEN BLUFF
HDPTWA01	HOODSPORT
ISQHWAEX	ISSAQUAH
JOYCWA01	JOYCE
KENTWAME	KENT MERIDIAN
KENTWAOB	KENT O BRIEN
KENTWA01	KENT ULRICK
LACYWA01	LACEY
LBLKWA01	LIBERTY LAKE
LGVWWA02	LONGVIEW
MPVYWAMV	MAPLE VALLEY
MRISWA01	MERCER ISLAND
MSLKWAAB	MOSES LAKE AFB
MSLKWA01	MOSES LAKE ALDER
NPVNWA01	NAPAVINE
NWLKWA01	NEWMAN LAKE
OLYMWAEV	OLYMPIA EVERGREEN
OLYMWA02	OLYMPIA WHITEHALL
ORCHWA01	ORCHARDS

OTHEWA01	OTHELLO
PTANWA01	PORT ANGELES
PTLWWA01	PORT LUDLOW
PTORWAFE	PORT ORCHARD
PTTWWA01	PORT TOWNSEND
PYLPWA01	PUYALLUP
RNTNWA01	RENTON
RDFDWA01	RIDGEFIELD
ROCHWA01	ROCHESTER
ROY_WA01	ROY
STTLWA05	SEATTLE ATWATER
STTLWACA	SEATTLE CAMPUS
STTLWACH	SEATTLE CHERRY
STTLWADU	SEATTLE DUMWAMISH
STTLWA03	SEATTLE EAST
STTLWAEL	SEATTLE ELLIOTT
STTLWA04	SEATTLE EMERSON
STTLWALA	SEATTLE LAKEVIEW
STTLWA06	SEATTLE MAIN
STTLWAPA	SEATTLE PARKWAY
STTLWASU	SEATTLE SUNSET
STTLWAVE	SEATTLE WEST
SEQMWA01	SEQUIM
SHTNWA01	SHELTON
SLDLWASI	SILVERDALE
SPKNWACH	SPOKANE CHESTNUT
SPKNWAF	SPOKANE FAIRFAX
SPKNWAHD	SPOKANE HUDSON
SPKNWAKY	SPOKANE KEYSTONE
SPKNWAMO	SPOKANE MORAN
SPKNWA01	SPOKANE RIVERSIDE
SPKNWAWA	SPOKANE WALNUT
SMNRWA01	SUMNER
SNYSWA01	SUNNYSLOPE
TACMWAF	TACOMA FAWCETT
TACMWAFL	TACOMA FORT LEWIS
TACMWAGF	TACOMA GREENFIELD
TACMWAJU	TACOMA JUNIPER
TACMWALE	TACOMA LENOX
TACMWALO	TACOMA LOGAN
TACMWASY	TACOMA SKYLINE
TACMWAWA	TACOMA WAVERLY 2
TACMWAWV	TACOMA WAVERLY 7
VANCWA01	VANCOUVER
VANCWANO	VANCOUVER NORTH
WRDNWA01	WARDEN

UT-043011
Appendix A
ORDER NO. 02

WNLCWA01
YAKMWA02
YAKMWAVE

WINLOCK
YAKIMA CHESTNUT
YAKIMA WEST

SAC TELEPHONE COMPANY
522400 Sprint/United Tel. NW – WA

WIRE CENTER EXCHANGE

BCTNWAXX	BICKLETON
BRNNWAXX	BRINNON
CNTRWAXX	CHIMACMCTR
CLMAWAXA	COLUMBIA
DLPTWAXA	DALLESFORT
GRNRWAXX	GARDINER
GLWDWAXA	GLENWOOD
GLDLWAXA	GOLDENDALE
GDVWWAXA	GRANDVIEW
GRNGWAXA	GRANGER
HRRHWAXA	HARRAH
LYLEWAXA	LYLE
MBTNWAXX	MABTON
MTWAWAXA	MATTAWA
PASNWAXA	PATERSON
PLSBWAXX	POULSBO
PRSRWAXA	PROSSER
QLCNWAXA	QUILCENE
RSVTWAXA	ROOSEVELT
STSNWAXA	STEVENSON
SNSDWAXX	SUNNYSIDE
TPNSWAXX	TOPPENISH
TRLKWAXX	TROUT LAKE
WPATWAXX	WAPATO
WHSLWAXX	WH SALMON
WHSWWAXX	WHITE SWAN
WHTSWAXA	WHITSTRAN
WLRDWAXX	WILLARD
WSHRWAXA	WISHRAM
ZLLHWAXA	ZILLAH

522404 Asotin Tel. – WA

ANATWAXX	ANATONE
ASOTWAXA	ASOTIN

522408 Century Tel. of
Washington, Inc.

ALMRWAXA	ALMIRA
ASLKWAXA	AMES LAKE
ARLTWAXX	ARLETTA
ASFDWAXA	ASHFORD
BSCTWAXX	BASIN CITY
BLKIWAXX	BLAKELY ISLAND
CRNTWAXX	CARNATION
CTHLWAXA	CATHLAMET
CHNYWAXC	CHENEY
CLWRWAXA	CLEARWATER

CNNLWAXA	CONNELL
CETNWAXX	CRESTON
ESNDWAXA	EAST SOUND
EDWLWAXA	EDWALL-TYLER
ELMAWAXA	ELMA
ELTPWAXX	ELTOPIA
FLCYWAXX	FALL CITY
FRKSWAXA	FORKS
FRHRWAXA	FRIDAY HARBOR
GGHRWAXA	GIG HARBOR
HRTNWAXA	HARRINGTON
KHLTWAXA	KAHLOTUS
KGTNWAXA	KINGSTON
LKBYWAXA	LAKEBAY
LINDWAXA	LIND
LNBDWAXA	LONG BEACH
LOPWAXX	LOPEZ
MTCOWAXX	MATHEWS CORNER
MCCLWAXA	MCCLEARY
MDLKWAXX	MEDICAL LAKE
MESAWAXX	MESA
MRTNWAXX	MORTON
NBNDWAXA	NORTH BEND
VSHNWAXB	NORTH VASHON
OCPKWAXX	OCEAN PARK
ODSSWAXA	ODESSA
ORNGWAXA	ORTING
RYCYWAXA	OTHELLO
PGISWAXX	PUGET ISLAND
RRDNWAXX	REARDAN
RTVLWAXA	RITZVILLE
SNPSWAXA	SNOSQUALNIE PASS
SPRRWAXX	SOUTH PRAIRIE
SPNGWAXA	SPANGLE
SPRGWAXA	SPRAGUE
VADRWAXA	VADER
VSHNWAXA	VASHON
WSHTWAXA	WASHTUCNA
WLBRWAXA	WILBUR
WSCKWAXA	WILSON CREEK
YCLTWAXA	YACOLT

522410 Century Tel. of Cowiche,
Inc

CWCHWAXX
RMRKWAXA
TITNWAXX

COWICHE
RIMROCK
TIETON

522412	Ellensburg Tel. Co.	ELBGWAXA KTTSWAXX LDDLWAXA SELHWAXX THRPWAXA VNTGWAXX	ELLENSBURG KITTITAS LAUDERDALE SELAH THORPE VANTAGE
522417	Hat Island Tel. Co.	SWHDWAXX	HAT ISLAND
522419	Hood Canal Tel. Co., Inc.	UNINWAXB	UNION
522423	Inland Tel. Co. – WA	RSLNWAXX UNTWAXA	ROSLYN UNIONTOWN
522426	Kalama Tel. Co.	KALMWAXB	KALAMA
522427	Lewis River Telephone Co., d/b/a TDS Telecom	AMBYWAXA LACTWAXA YALEWAXX	AMBOY LA CENTER YALE
522430	McDaniel Tel. Co. dba TDS Telecom	MSRKWAXX ONLSWAXA SLKMWAXB	MOSSY ROCK ONALASKA SALKUM
522431	Mashell Telecom, Inc.	ETVLWAXA	EATONVILLE
522442	St. John Telephone and Telegraph	STJHWAXA	ST JOHN
522446	Tenino Tel. Co.	TENNWAXA	TENINO

522447	Toledo Te. Co. Inc.	TOLDWAXA	TOLEDO
522451	Western Wahkiakum County Tel. Co.	GRRWAXA NASLWAXX	GRAYS RIVER NASELLE
522452	Whidbey Tel. Co.	PNRBWAXA CLTNWAXA FELDWAXA LNGLWAXA SWHDWAXX	POINT ROBERTS SOUTH WHIDBEY
522453	Yelm Tel. Co.	RANRWAXA YELMWAXA YELMWAXB	RAINIER YELM

EXHIBIT 2

BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Application of United States Cellular Corporation
for Designation as an Eligible Telecommunications Carrier
and Petition for a Declaratory Ruling

Docket 8225-TI-102

**REQUEST FOR RESCISSION OF ORDER AND REOPENING OF CASE
BY CENTURYTEL AND TDS TELECOM LOCAL EXCHANGE COMPANIES**

The CenturyTel and TDS Telecom local exchange companies in Wisconsin, listed in Appendix A,¹ hereby request the Commission pursuant to Wis. Stats. § 196.39 to rescind the Final Decision issued in this docket on December 20, 2002 which designates U.S. Cellular Corporation as an Eligible Telecommunications Carrier ("ETC") for federal universal service funding. The companies further request the Commission to reopen the docket for the purpose of further investigation and a contested case hearing on U.S. Cellular's request for ETC designation.

The grounds for this request are as follows:

1. The Commission failed to follow its own procedures for ETC designation, and deprived the CenturyTel and TDS Telecom local exchange companies, as rural telephone companies, of their right to a hearing on U.S. Cellular's request for ETC status.
2. Undisputed facts in the record contradict the Commission's finding that U.S. Cellular meets the federal requirements for ETC designation. In specific, U.S. Cellular did not make an unqualified offer to provide supported services to all customers in the areas it proposes to serve.
3. Although the Commission's rules provide it with discretion to waive the application of state ETC service requirements for "individual providers" under "exceptional or unusual situations," it has abused its discretion in this case by creating an exception that swallows its ETC rules as they apply to wireless carriers. Moreover, the Commission's decision to

¹ The same companies have previously participated in this docket through the ILEC Division of the Wisconsin State Telecommunications Association. See Attachment A to the Initial Comments and Request for Full Intervention and Contested Case by ILEC Division of the Wisconsin State Telecommunications Association.

grant a blanket waiver of state ETC requirements to wireless providers is contrary to the Commission's decision two years ago to impose the very same requirements on wireless providers, a contradiction the Commission has failed to acknowledge or explain.

The CenturyTel and TDS Telecom local exchange companies also join in the request for rescission and reopening filed contemporaneously by the ILEC Division of the Wisconsin State Telecommunications Association ("WSTA"), which focuses on the policy implications of the Commission's decision to grant a blanket exemption of wireless carriers from state ETC standards.

The CenturyTel and TDS Telecom local exchange companies intend to file a petition for judicial review of the Final Decision within the 30-day limitation period prescribed by Wis. Stats. § 227.53. Although the companies would prefer the Commission to correct its errors through rescission and reopening, and case law suggests that the six-month limitation period for certiorari actions applies to agency decisions made outside of contested cases, *Hedrich v. Board of Regents*, 248 Wis. 2d 204, 635 N.W.2d 650 (Ct. App. 2001), the companies do not wish to risk waiver of their right to judicial review. The companies are willing to stay the judicial review proceeding pending the Commission's resolution of this request.

I. THE COMMISSION FAILED TO FOLLOW ITS OWN ETC DESIGNATION PROCEDURES.

Federal law establishes a set of minimum criteria a provider must meet in order to be designated an ETC and begin to receive universal service funding. 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.101. Federal law delegates to state commissions the responsibility for designating providers as ETCs. 47 U.S.C. § 214(e)(2); 47 C.F.R. § 54.201(b).

This Commission has promulgated rules implementing the federal universal service law. Wis. Admin. Code Chap. PSC 160. Those rules include procedures for providers to apply for ETC designation by the Commission. Wis. Admin. Code § PSC 160.13. "Those rules

govern the process for ETC designation and set forth a minimum set of requirements for providers seeking ETC designation from the Commission,” including state requirements that are in addition to the minimum federal requirements. Final Decision at 3-4 (emphasis added).

The federal law and the Commission’s ETC regulations require a public interest finding if a provider seeks ETC status in connection with service in an area served by a rural telephone company. 47 U.S.C. § 214(e)(2); 47 C.F.R. § 201(c); Wis. Admin. Code § PSC 160.13(3). Each of the CenturyTel and TDS Telecom local exchange companies is a rural telephone company for purposes of ETC designation. *See* 47 U.S.C. § 153(37); 47 C.F.R. § 51.5; Wis. Admin. Code § 160.02(11).

If Congress had intended that ETCs be automatically approved in all areas served by rural telephone companies, then it would have said so, as it did for areas served by non-rural companies. By providing that additional ETCs can be designated in rural areas only if the state commission finds the designation to be in the public interest, 47 U.S.C. § 214(e)(2), Congress clearly contemplated that there would be some areas where no additional ETCs should be designated. As FCC Commissioner Kevin Martin has noted, the designation of additional ETCs for the purpose of creating competition is problematic:

I also note that I have some concerns with the Commission’s policy – adopted long before this Order – of using universal service support as a means of creating “competition” in high cost areas. I am hesitant to subsidize multiple competitors to serve areas in which costs are prohibitively expensive even for one carrier. This policy makes it difficult for any one carrier to achieve economies of scale necessary to serve all of the customers in a rural area, leading to inefficient and/or stranded investment and a ballooning universal service fund.

Separate Statement of Commissioner Kevin J. Martin, Second Report & Order and Final Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report & Order in CC Docket 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166 (rel. Nov. 8, 2001).

The Commission's ETC regulations require that this public interest finding be made "pursuant to federal law and s. 196.50(2), Stats." Wis. Admin. Code § PSC 160.13(3) (emphasis added). Section 196.50(2) governs the certification of telecommunications utilities. Under § 196.50(2)(f), before granting a certificate of authority to a telecommunications utility, the Commission must find "that the applicant possesses sufficient technical, financial and managerial resources to provide telecommunications service to any person within the identified geographic area. In making this determination, the commission shall consider the factors identified in s. 196.03(6)." This determination must be preceded by "notice and opportunity for hearing." *Id.* (emphasis added). The Commission's incorporation of these procedures in its ETC rules means that the procedures apply to any carrier seeking ETC designation, regardless of whether it is a telecommunications utility.

In designating U.S. Cellular an ETC, the Commission did not make the finding required by Section 196.50(2)(f). While it considered the factors identified in Section 196.03(6) (Final Decision at 7-8), it did not investigate, establish a record and determine whether U.S. Cellular "possesses sufficient technical, financial and managerial resources to provide telecommunications service to any person within the identified geographic area."

In addition, before designating U.S. Cellular as an additional ETC in areas served by the CenturyTel and TDS Telecom local exchange companies, the Commission did not provide them with an opportunity for hearing. The Commission did not act upon, and therefore effectively denied, the formal request for a contested case hearing made by the ILEC Division of WSTA on behalf of the CenturyTel and TDS Telecom local exchange companies. Initial Comments and Request for Full Intervention and Contested Case by ILEC Division of the Wisconsin State Telecommunications Association, at 28-30.

It is a “fundamental principle of administrative law” in Wisconsin that “an agency is bound by the rules which it itself has promulgated and may not proceed without regard to its own rules.” *Larsen v. Munz Corp.*, 166 Wis. 2d 751, 760, 480 N.W.2d 800, 803 (Ct. App.), *rev’d on other grounds* 167 Wis. 2d 583, 482 N.W.2d 332 (1992). Wisconsin’s Administrative Procedure Act requires reversal or remand of an agency’s action which “is inconsistent with an agency rule.” Wis. Stats. § 227.57(8). This fundamental principle has been consistently reaffirmed by the Wisconsin courts. *State v. Griffin*, 126 Wis. 2d 183, 197, 376 N.W.2d 62, 69 (Ct. App. 1985), *aff’d* 131 Wis. 2d 41, 60, 388 N.W.2d 535, 542 (1986), *aff’d* 483 U.S. 868, 107 S. Ct. 3164, 97 L. Ed. 2d 709 (1987); *Prahl v. Brosalme*, 98 Wis. 2d 130, 155, 295 N.W.2d 768, 782 (Ct. App. 1980); *State ex rel. Meeks v. Gagnon*, 95 Wis. 2d 115, 119, 289 N.W.2d 357, 361 (Ct. App. 1980). Although the Commission may permit a party to waive a right granted to it by the Commission’s rules, it cannot unilaterally deprive interested parties of their right to be heard when those rules provide such a right.

In designating U.S. Cellular as an ETC only for the purpose of receiving federal USF support, the Commission waived application of the additional “state requirements for and obligations of ETC status” found in the Commission’s ETC designation rules. As the record makes clear, however, the Commission at most excused U.S. Cellular from having to provide the additional services state law requires an ETC to provide over and above federal requirements. U.S. Cellular requested nothing more. See Supplement to Application of United States Cellular Corporation for Designation as an Eligible Telecommunications Carrier, at 3. The Commission did not waive the application of the procedures set forth in Chapter PSC 160 for ETC designation. As noted above, the Commission applied the factors listed in Wis. Stats. § 196.03(6) to U.S. Cellular’s designation request. Final Decision at 7-8. Moreover, the

Commission relied on § PSC 160.01(2)(b) for its authority to waive the application of state ETC service requirements to wireless providers.

Nor should the Commission waive application of § PSC 160.13 to wireless providers in its entirety. The regulations provide important procedural protections to incumbent local exchange carriers and their customers.

For these reasons, the Commission failed to follow prescribed procedure and the Final Decision is inconsistent with the Commission's ETC designation rules. The Commission should rescind the Final Decision and reopen this proceeding for the purpose of holding a contested case hearing on U.S. Cellular's request.

II. EVEN IF THE COMMISSION WAIVED THE APPLICATION OF § PSC 160.13 TO WIRELESS CARRIERS IN ITS ENTIRETY, THE CENTURYTEL AND TDS TELECOM LOCAL EXCHANGE COMPANIES WERE ENTITLED TO A HEARING.

In Frontier Communications of Wisconsin, Inc. and Wisconsin State Telecommunications Association v. Public Service Commission of Wisconsin, slip op., Case No. 00-CV-2496 (August 7, 2002) (attached hereto as Appendix B), the Dane County Circuit Court recently held that an incumbent local exchange carrier has a right to a hearing before being deprived of its exclusive franchise rights under Wis. Stats. § 196.50(1)(b)2. For the same reasons, rural telephone companies have a right to a hearing before the Commission designates additional ETCs in their service territories.

Federal and state law require the Commission to make a public interest finding before designating an additional ETC, and allowing it to compete with the incumbent rural telephone company with the support of universal service funding, in an area served by a rural telephone company which has already been designated as an ETC based on its obligation to provide universal service. Before the Commission makes such a finding and designates an

additional ETC, the incumbent rural telephone company is the only carrier that received universal service funding for service in its area. Federal and state law therefore protect the incumbent rural telephone company from competition supported by universal service funding unless and until (1) another carrier makes a commitment to provide universal service and (2) the Commission finds it in the public interest to designate an additional ETC. These criteria establish "a system of nondiscretionary rules governing revocation or renewal of" a rural telephone company's status as an exclusive ETC "that stands or falls on the application of rules to facts." *Frontier Communications*, slip. op. at 5, citing *Cornelius v. LaCroix*, 838 F.2d 207, 210 (7th Cir. 1988); *Scott v. Village of Kewaskum*, 786 F.2d 338, 339-40 (7th Cir. 1986). For these reasons, a rural telephone company has a protected property interest in its exclusive ETC status.

Therefore, a rural telephone company cannot be deprived of its exclusive ETC status without due process. At a minimum, the rural telephone company has the right to be heard. "Procedural due process requires that the state afford an individual the opportunity to be heard at a meaningful time, in a meaningful manner." *Frontier Communications*, slip. op. at 5-6, quoting *Dremel v. Nursing Home Review Board*, 119 Wis. 2d 75, 81-82, 349 N.W.2d 725, 729 (Ct. App. 1984).

Had the Commission held a hearing, the CenturyTel and TDS local exchange companies and other parties would have had the opportunity to establish a factual record on at least the following issues raised by the comments on U.S. Cellular's ETC designation request and by the Final Decision itself:

- Whether and under what circumstances it is reasonable to amend the Commission's ETC rules to allow providers to avoid the application of state ETC standards.
- Whether U.S. Cellular meets federal and state ETC standards. In particular:

- a. To what extent is U.S. Cellular unable to provide wireless service in the proposed designation areas and what is U.S. Cellular's specific commitment to offer service in those areas.
 - b. Will U.S. Cellular provide unlimited local calling and equal access to long distance providers?
 - c. Do the Lifeline and Link-Up plans filed by U.S. Cellular meet state ETC requirements?
- Whether "exceptional and unusual situations" exist and justify the adoption of different universal service requirements for U.S. Cellular. If so, what those requirements should be. For example, what is the justification for U.S. Cellular to avoid the obligations associated with equal access, directories, directory listings, and pay telephones that otherwise apply to ETCs?
- Whether it is reasonable to designate U.S. Cellular as an ETC for areas smaller than the service territory of the incumbent local exchange carrier.
- Whether it is in the public interest to designate U.S. Cellular as an ETC in any area served by a rural telephone company. In particular:
 - a. Whether and to what extent designating U.S. Cellular as an ETC will promote competition, when U.S. Cellular is already providing service in the designation areas.
 - b. Whether designating U.S. Cellular as an ETC will spur ILEC infrastructure deployment and encourage further efficiencies and productivity gains. Or will it provide a motive and opportunity for ILECs to limit investments or withdraw service in high cost areas?
 - c. Whether and to what extent designating U.S. Cellular as an ETC will promote advanced services.
 - d. Whether and to what extent designating U.S. Cellular as an ETC will affect the affordability of universal service. How should the Commission ensure that supported services will remain affordable with the designation of additional ETCs?
 - e. What impact would designating wireless providers as ETCs in rural areas have on the total cost of federal USF?
 - f. What impact would designating wireless providers as ETCs in rural areas have on rural telephone company rates, especially if it results in the designating of additional wireless providers and a dilution of federal support available to ILECs?
 - g. What impact will designating wireless providers as ETCs have on the availability of federal universal service funding?

h. How can the Commission ensure that universal service support to wireless providers relates to usage in rural areas when billing addresses are used to determine the number of lines served? Should the wireless provider receive support if and to the extent the usage associated with a billing address in a high cost area actually occurs in low cost areas? Also, if billing addresses are used, how can the Commission prevent double counting where the land line associated with the billing address is already being counted by the ILEC for USF purposes?

i. Does the benefit of designating U.S. Cellular as an ETC exceed the cost?

The Commission's refusal to hold a hearing before designating U.S. Cellular an additional ETC in their service territories deprived the CenturyTel and TDS Telecom local exchange companies of their property without due process of law. Accordingly, the Commission should rescind the Final Decision and reopen this docket for the purpose of holding a hearing on U.S. Cellular's request for ETC designation.

III. U.S. CELLULAR HAS NOT OFFERED TO SERVE ALL CUSTOMERS IN ITS DESIGNATION AREAS.

In designating U.S. Cellular as an ETC for federal universal service funding purposes in the service territories of the CenturyTel and TDS Telecom local exchange companies, the Commission found that U.S. Cellular met the federal requirements for ETC designation. Final Decision at 2. One of the federal requirements for ETC designation is that the provider must offer to provide the services supported by federal USF, "either using its own facilities or a combination of its own facilities and resale of another carrier's services," "throughout the service area for which the designation is received." 47 U.S.C. § 214(e)(1)(A); 47 C.F.R. § 54.201(d). As U.S. Cellular concedes, in order to be designated as an ETC, "the provider must *offer* and *advertise* the services supported by the federal universal service mechanisms throughout the designated service area." Initial Comments of U.S. Cellular at 6 (emphasis in original). *See also* Reply Comments of U.S. Cellular at 16 n.8 ("U.S. Cellular has never asserted that it is not legally required to provide service to all consumers.").

The Commission based its decision to designate U.S. Cellular as an ETC on FCC precedent which allows a new entrant to “make a reasonable demonstration to the state commission of its capability and commitment to provide universal service without the actual provision of the service.” *In the Matter of Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, 15 FCC Rcd 16168, ¶ 24 (2000). The FCC has identified “several possible methods for doing so,” including:

- A description of the proposed service technology, as supported by appropriate submissions.
- A demonstration of the extent to which the carrier may otherwise be providing telecommunications services within the state.
- A description of the extent to which the carrier has entered into interconnection and resale agreements.
- A sworn affidavit signed by a representative of the carrier to ensure compliance with the obligation to offer and advertise the supported services.

U.S. Cellular made none of these showings in support of its request for ETC designation. Nonetheless, the Commission found that U.S. Cellular “will offer supported service to all customers in its designation areas.” Final Decision at 5. As support for this finding, the Commission cited an “affidavit ensuring compliance.” *Id.*

The record does not support the Commission’s finding. To the contrary, U.S. Cellular has refused to make an unqualified offer to provide federally supported services to all customers in its designation areas.

The record contains no affidavit sworn to by a U.S. Cellular representative testifying that U.S. Cellular “will offer supported service to all customers in its designation areas.” Rather, U.S. Cellular submitted with its application an unsworn “certification” that U.S. Cellular provides supported services in certain wire centers. This certification does not include

an offer to provide service to all customers in its designation areas. U.S. Cellular's claim in its application that the certification included such an offer was therefore a mischaracterization.

Application at 6, 7.

Nor did U.S. Cellular make such an offer in its comments. To the contrary, acknowledging that there will be customers in "shadows" or "dead spots" to whom U.S. Cellular cannot provide wireless service, U.S. Cellular said it will only "make commercially reasonable efforts to improve its coverage to serve such customers." U.S. Cellular Initial Comments at 9. U.S. Cellular further conditioned its offer to extend service to these customers on unspecified "economic, topographical and technological considerations." In its reply comments, U.S. Cellular conditioned its offer even further on the deployment of additional facilities "within a commercially reasonable timeframe." U.S. Cellular Reply Comments at 15. Notably, nowhere in its comments did U.S. Cellular offer to extend service to customers in "shadows" and "dead spots" through the use of the facilities of the incumbent carrier.

The Commission's determination that U.S. Cellular's access to federal USF support will make it "commercially reasonable" and "economically feasible" for U.S. Cellular to expand service to all customers in the designation areas who request it (Final Decision at 6) is speculation, unsupported by any facts of record. That U.S. Cellular may be required to extend service to requesting customers following ETC designation (*id.* at 6-7) does not change the fact that U.S. Cellular has not offered to do so. Such an offer is a prerequisite to ETC designation under federal law.

The CenturyTel and TDS Telecom local exchange companies do not take the position that a provider must necessarily be providing all supported services throughout the designation area before obtaining ETC designation. See Reply Comments of U.S. Cellular at 15-

18.² Nor do they disagree that an ETC designee “must be given a reasonable opportunity to provide service to requesting customers, whether through expansion of its own facilities or some other method.” Final Decision at 7. But federal law requires an unqualified offer to provide all supported services throughout the designation areas. U.S. Cellular did not provide such an offer. Rather, it conditioned its offer on its ability to extend service only if “commercially reasonable” and “economically feasible.” U.S. Cellular’s conditions on its commitment defeat the very purpose of universal service, which is to ensure that service is available to all customers even if it is not commercially reasonable or economically feasible to serve them. 47 U.S.C. § 254(b)(3).

For these reasons, the Commission’s determination that U.S. Cellular met the federal requirements for ETC status was in error. A hearing on U.S. Cellular’s ETC application would allow a full investigation into the true scope of U.S. Cellular’s service offer and the reasons for its significant qualifications. The Commission would do a disservice to the goals of universal service by allowing carriers to obtain ETC status with offers merely to provide supported services on a “commercially reasonable” or “economically feasible” basis.

IV. THE COMMISSION ABUSED ITS DISCRETION TO GRANT EXCEPTIONS TO ITS ETC RULES FOR “EXCEPTIONAL OR UNUSUAL SITUATIONS.”

The Commission’s ETC rules provide it with the discretion to adopt different requirements, but only for “individual providers” under “exceptional or unusual situations.” However, in designating U.S. Cellular as an ETC without applying its normal ETC standards, the Commission abused its discretion by creating an exception that swallows the rule. *See Wisconsin Power & Light Co. v. PSC*, 181 Wis. 2d 385, 395, 511 N.W.2d 291, 295 (1994); *Town of Pewaukee v. Wisconsin Dept. of Development*, 186 Wis. 2d 515, 531, 521 N.W.2d 453, 459 (Ct. App. 1994).

² However, U.S. Cellular should be required to provide a specific timeline for offering all federally supported services throughout the designated areas in order to meet the requirements of federal law. 47 U.S.C. § 214(e)(1)(A); 47 C.F.R. § 54.201(d).

The Commission's previous practice has been to limit exceptions granted under § 160.01(2)(b) to "unique situations" affecting individual companies. *See* Order Granting Exception to the Lifeline Rules for Four Companies to Offset an Increase in the Federal Subscriber Line Charge, Docket 05-GF-104 (Aug. 4, 2000). By contrast, the Commission's decision in this case allows every wireless provider to avail itself of the exception granted to U.S. Cellular. This is borne out by the fact that in the aftermath of the ruling in this case, no fewer than seven wireless companies have applied to avail themselves of the Commission's new standard for "exceptional or unusual circumstances."³ That every wireless provider can claim the same "exceptional or unusual circumstances" as U.S. Cellular demonstrates that the circumstances are neither exceptional nor unusual. In labeling them as such, the Commission has created an "exception" so universal that it creates a blanket exemption for all wireless providers from state ETC requirements. This is an impermissible construction under Wisconsin law. *See Wisconsin Power & Light*, 181 Wis. 2d at 385. An agency is bound by the rules that it has promulgated. *See Larsen*, 166 Wis. 2d at 760. It cannot create a special exception to those rules so broad that every wireless carrier may avoid them.

Moreover, as demonstrated in the request for rescission and reopening filed by the ILEC Division of WSTA, the Commission's blanket exemption is contrary to the Commission's decision just two year ago to apply state ETC requirements to wireless providers. The

³ Wausau Cellular, filed 11-25-02 (Docket 8250-TI-100)
Metro Southwest, filed 11-25-02 (Docket 8123-TI-100)
Brown County MSA Cellular Ltd Partnership, filed 11-25-02 (Docket 8159-TI-100)
Wisconsin RSA #3 Ltd Partnership, filed 11-25-02 (Docket 8194-TI-101)
Wisconsin RSA #4 Ltd Partnership, filed 11-25-02 (Docket 8195-TI-101)
Wisconsin RSA #10 Ltd Partnership, filed 11-25-02 (Docket 8201-TI-101)
NSighttel Wireless LLC, filed 12-4-02 (Docket 8202-TI-101)

Commission's sudden reversal of that recent decision is not explained, much less explicable. The Commission's decision is therefore subject to judicial reversal or remand. *See Arrowhead United Teachers Org. v. Wisconsin Employment Relations Comm'n*, 116 Wis. 2d 580, 589, 342 N.W.2d 709, 714 (1984) (deviation from prior agency action must be explained, and explanation must have a rational basis).

Conclusion

For these reasons, the CenturyTel and TDS Telecom local exchange companies respectfully request the Commission to rescind its December 20, 2002 Final Decision and reopen this docket for the purpose of providing the companies and other parties with opportunity for a hearing on U.S. Cellular's request for ETC designation.

Dated this 9th day of January, 2003.

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APPENDIX A

CENTURYTEL AND TDS LOCAL EXCHANGE COMPANIES

CenturyTel-Central
CenturyTel-FBA
CenturyTel-Forestville
CenturyTel-Larsen
CenturyTel-Midwest-Kendall
CenturyTel-Midwest-WI
CenturyTel-Monroe County
CenturyTel-Northern
CenturyTel-Northwest
CenturyTel-Southern
CenturyTel-Telephone USA
CenturyTel-Wisconsin

TDS-Badger
TDS-BB&W
TDS-Black Earth
TDS-Bonduel
TDS-Central State
TDS-Dickeyville
TDS-East Coast
TDS-Farmers
TDS-Grantland
TDS-Mid-Plains
TDS-Midway
TDS-Mount Vernon
TDS-Riverside
TDS-Scandinavia
TDS-Southeast
TDS-Stockbridge
TDS-Tenney
TDS-UTELCO
TDS-Waunakee